

UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF OHIO  
EASTERN DIVISION

)

)

)

)

)

)

)

## MEMORANDUM OF OPINION AND ORDER

Petitioner Desmond Peacock filed a Petition for a Writ of Habeas Corpus pursuant to [28 U.S.C. § 2254](#) ([ECF No. 1](#)) alleging two grounds for relief.<sup>1</sup> Each ground for relief challenges or purports to challenge the constitutionality of his conviction in the Cuyahoga County Court of Common Pleas. [Case No. CR-14-588585-A](#); [Id. at PageID #: 4-5](#). A Cuyahoga County Grand Jury indicted Petitioner on one count of felonious assault, with two firearm specifications and forfeiture specifications; one count of aggravated robbery, with two firearm specifications and forfeiture specifications; one count of kidnapping, with two firearm specifications and forfeiture specifications; and one count of theft, with forfeiture specifications. [ECF No. 5-1 at PageID #: 38-42](#). A jury convicted Peacock on all counts in the indictment. [Id. at PageID #: 45](#). The Ohio appeals court affirmed his

<sup>1</sup> Petitioner is still serving his sentence at the Trumbull Correctional Institution. [Offender Details, Ohio Department of Rehabilitation & Correction, \(Oct. 2, 2019\), https://appgateway.drc.ohio.gov/OffenderSearch/Search/Details/A663507](https://appgateway.drc.ohio.gov/OffenderSearch/Search/Details/A663507). He is expected to be released in October 2021. *Id.*

(1:17CV583)

sentence, but vacated his three-year gun specification under the felonious assault count. [Id. at PageID #: 100](#). The Supreme Court of Ohio declined to review Peacock's appeal. [Id. at PageID #: 154](#).

The case was referred to Magistrate Judge Kathleen A. Burke for preparation of a report and recommendation pursuant to [28 U.S.C. § 636](#) and Local Rule 72.2(b)(2). On August 21, 2019, the magistrate judge issued a Report and Recommendation ([ECF No. 10](#)). In her report, Magistrate Judge Burke recommends dismissing the first ground as unexhausted in the state courts, or in the alternative, dismissing it as not cognizable on federal habeas review or denying the first ground as being meritless. [ECF No. 10 at PageID #: 874](#). On Petitioner's second ground for relief, the magistrate judge recommends dismissing his claim for "manifest weight of the evidence" as not cognizable on federal habeas review and denying his "sufficiency of the evidence" claim. [Id. at PageID #: 874, 880](#).

[Fed. R. Civ. P. 72\(b\)\(2\)](#) provides that objections to a report and recommendation must be filed within 14 days after service. Objections to the Report were due, therefore, on September 4, 2019.<sup>2</sup> To date, neither party has filed any such objections. Any further review would be duplicative and an inefficient use of the Court's limited resources. [Thomas v. Arn, 728 F.2d 813 \(6th Cir. 1984\)](#), *aff'd*, [474 U.S. 140 \(1985\)](#); [Howard v. Sec'y of Health and Human Servs., 932 F.2d 505 \(6th Cir. 1991\)](#); [United States v. Walters, 638 F.2d 947, 949-50 \(6th Cir. 1981\)](#).

Accordingly, the Report and Recommendation of the magistrate judge is hereby adopted. Desmond Peacock's Petition for a Writ of Habeas Corpus will be dismissed.

---

<sup>2</sup> Under [Fed. R. Civ. P. 6\(d\)](#), three days must be added to the fourteen-day time period because Petitioner was served a copy of the Report by mail. See [Thompson v. Chandler, 36 F. App'x 783, 784 \(6th Cir. 2002\)](#).

(1:17CV583)

The Court certifies that there is no basis upon which to issue a certificate of appealability.

[28 U.S.C. § 2253\(c\)](#); [Fed. R. App. P. 22\(b\)](#).

IT IS SO ORDERED.

October 2, 2019

Date

/s/ Benita Y. Pearson

Benita Y. Pearson

United States District Judge